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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 551

AUDRIA HART, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the District Court (R. 47-54) are reported in 110 F. Supp. 898. The opinion of the Court of Appeals (R. 67-77) is reported in 207 F. 2d 813.

JURISDICTION

The judgment of the Court of Appeals was entered on November 10, 1953. (R. 77.) The petition for a writ of certiorari was filed on January 28, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether a state court proceeding to foreclose a chattel mortgage and pledge on property in the custody of that court precluded the District Court from adjudicating tax claims of the United States against the owners of the property where the United States was not at the time a party to the state court proceeding.

2. Whether the filing of a petition for leave to intervene in the state court action and its withdrawal before trial estopped the United States from instituting an action in the District Court for the purpose of adjudicating its tax claims.

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, *infra,* pp. 12-14.

STATEMENT

The material facts, as stipulated (R. 30-33) and as found by the courts below (R. 47-49, 67-72), may be summarized as follows:

On October 20, 1949, Elizabeth Shoemaker owned all but one share of the outstanding capital stock of three Arkansas corporations, the Yellow Cab Company, Inc., the Checker Cab and Baggage Company, and the Yellow Cab Building Company, Inc. Mrs. Shoemaker operated and was president of the two cab companies. (R. 30, 68.) In August 1949, as a result of an investigation which began in 1947, notices of deficiency assessments for income taxes for the years 1943 through 1945 were mailed to Elizabeth Shoemaker and the two taxi-

cab companies, hereinafter called the taxpayers. (R. 31, 68.) Two months after receiving this notice, taxpayers gave to Audria Hart (petitioner herein), Elizabeth Shoemaker's sister, a promissory note for $59,900, secured by a chattel mortgage on the personal property of the taxicab companies. (R. 30.) This mortgage was recorded on November 2, 1949. (R. 31.) Elizabeth Shoemaker also executed to Audria Hart a pledge of her stock in the taxicab companies and the Yellow Cab Building Company. (R. 30-31.) Both taxicab companies were insolvent when the mortgage and pledge were given. (R. 49.)

Taxpayers filed a petition in the Tax Court of the United States on November 4, 1949, for a redetermination of the assessed deficiencies, and on June 4, 1951, the Tax Court entered judgment against Elizabeth Shoemaker for $67,112.73, against the Yellow Cab Company for $81,254.33, and against the Checker Cab Company for $134,-113.33. (R. 31.)

On August 3, 1951, after tax liens had been filed against Elizabeth Shoemaker and the Yellow Cab Company but before filing against the Checker Cab Company (R. 31), Audria Hart brought an action in the Chancery Court of Pulaski County, Arkansas, against Elizabeth Shoemaker and the two taxicab companies, to foreclose the chattel mortgage and pledge (R. 32). At the request of Audria Hart, the Chancery Court appointed a receiver to take possession of the property of the Checker Cab Company. (R. 32.) The property

of the Yellow Cab Company, having previously been seized by the Deputy Collector of Internal Revenue, was subsequently turned over to the receiver upon presentation of the Chancery Court order of appointment. (R. 37, 69.)

On August 20, 1951, the United States petitioned the Chancery Court for permission, which was granted, to intervene in that proceeding. (R. 32.) Subsequently, the Acting Collector of Internal Revenue filed a notice of claim in the Chancery Court for taxes owed by taxpayers. (R. 24-29.) On March 26, 1952, with consent of the Chancery Court, the United States withdrew its intervention. (R. 21.) On the following day the trial of that action was held, and the Chancery Court entered judgment in favor of Audria Hart for the amount of the promissory note, and directed that the property covered by the chattel mortgage and pledge be sold on April 30, 1952. (R. 33.)

However, in the preceding September, approximately one month after Audria Hart originally commenced her action in the Chancery Court, the United States brought an independent action in the United States District Court for the Eastern District of Arkansas. (No. 2334.) (R. 1.) As amended on April 25, 1952, this action was directed against Audria Hart, the taxpayers and the Yellow Cab Building Company. (R. 4.) In the amended complaint the United States requested judgment be entered against the taxpayers for the amount of taxes found due by the Tax Court, that such judgment be declared a prior lien on all

property owned by taxpayers, that the mortgage and pledge given to Audria Hart be set aside as a fraudulent conveyance as against the United States and that the Government's claim be declared prior to the claim of Audria Hart. In addition, the United States further requested that Audria Hart be enjoined from disposing of the property transferred to her by taxpayers, that a receiver be appointed over all the property of the taxpayers and the property be sold if the judgments were not paid. (R. 8-9.)

On the same day that the United States amended its complaint in the District Court, or on April 25, 1952, the United States also instituted a second action in that court (No. 2406), to enjoin Audria Hart, Elizabeth Shoemaker and the Commissioner appointed by the Chancery Court from selling the property covered by the mortgage and pledge, pending the final determination of the action in the District Court. (R. 16-17.) These two actions were later consolidated for trial. (R. 71.)

Despite Audria Hart's contention that the property was under the exclusive jurisdiction of the Chancery Court (R. 13), the District Court held that it had jurisdiction of the action brought by the United States (R. 52). The District Court found that the mortgage and pledge were fraudulent and void as against existing creditors, including the United States (R. 49, 54), and established the priority of the Government's tax liens as against the claims of Audria Hart (R. 53, 54-55). The District Court also enjoined Audria Hart, the

three taxpayers, and anyone acting with them from disposing of any assets of the three taxpayers or from selling any additional stock in the building company. (R. 55.) This injunction was subsequently modified to permit the sale of the stock and property, but required that the net proceeds be held by the Chancery Court pending the determination of an appeal by Audria Hart to the Court of Appeals for the Eighth Circuit. (R. 56.)

On appeal the Court of Appeals decided that the United States could maintain its action in the District Court to adjudicate the priority of its tax lien as against the claim of Audria Hart. The Court of Appeals further held that such rights were personal between the United States and petitioner, and that their determination did not disturb the Chancery Court's possession of the property. (R. 74, 76.) The Court of Appeals also held that the United States was not "estopped" from withdrawing from the state court proceeding before trial and then establishing its tax claim in the District Court. (R. 73.) The District Court's findings, that the mortgage and pledge were fraudulent and void against the United States, and that the latter's tax claims were prior liens as against the claims of Audria Hart, were also affirmed by the Court of Appeals. (R. 76-77.) However, the Court of Appeals modified the District Court judgment by holding that the disposition of the property already in the custody of the Chancery Court could not be enjoined. (R. 76-77.)

ARGUMENT

Petitioner relies upon *Pufahl* v. *Estate of Parks,* 299 U. S. 217, in contending that the state court had sole and exclusive jurisdiction to adjudicate rights *in personam* to property within its custody. As appears below, however, the *Pufahl* case is clearly distinguishable on its facts and is not authority for the proposition relied upon by petitioner. Nor is the decision here in conflict with this Court's decision in that case.

Pufahl v. *Estate of Parks, supra,* involved the question of whether a receiver of a national bank was required to file an assessment of stockholders' liability against a deceased stockholder of the bank in the state court within the period provided by the state statute. The opinion stated, in part, that the receiver could elect to prosecute his claim in either the state or federal court. By statute the assessment was an unpreferred claim, and this Court pointed out that in such a case the federal court could only adjudicate the validity and amount of the claim where the *res* was in the possession of the state court. The marshalling of the claim with others would be controlled by the state court and the receiver would be required to present the federal court judgment to it to receive payment.

The object of the instant action in the federal court was to establish the tax claim of the United States and to adjudicate the priority of its tax lien against the claim of a prior lien by the petitioner. (R. 8-9, 78.) Petitioner erroneously assumes that this action was an "in rem" proceed-

ing, designed to control the possession of a *res* which was in the custody of a state court. (Pet. 19.) She incorrectly relies upon language of this Court in the *Pufahl* case, *supra,* for the proposition that the state court, having prior possession of the *res,* had sole jurisdiction to determine all rights and interests in the property, and that the District Court could only ascertain the "validity and amount" of the tax claim of the United States against taxpayers. (Pet. 9.) However, in similar cases this Court has consistently ruled that a district court has jurisdiction to adjudicate rights to or interests in property in the custody of a state court, where the final judgment does not interfere with the state court's possession, save to the extent that the latter is bound to recognize the rights adjudicated by the federal court. *Propper* v. *Clark,* 337 U. S. 472; *Markham* v. *Allen,* 326 U. S. 490; *Mandeville* v. *Canterbury,* 318 U. S. 47; *Commonwealth Co.* v. *Bradford,* 297 U. S. 613; *Penn Co.* v. *Pennsylvania,* 294 U. S. 189.

The Court of Appeals was thus clearly correct in holding that the rights of the United States to adjudicate its tax claim and the priority of its tax lien against the claim of petitioner are personal between the United States and petitioner. The Eighth Circuit was likewise correct in holding that the determination of such rights involved questions which preceded the distribution of the property and did not disturb the right of possession of the state court. Hence, they could be litigated in either court, and principles of comity did not re-

quire the District Court to defer to the jurisdiction of the state court. (R. 74.) The Court of Appeals properly interpreted that portion of this Court's opinion in the *Pufahl* case, *supra,* quoted and relied upon by petitioner (Pet. 10), as only requiring the United States to present to the state court the judgment obtained in the District Court in order to secure payment from the assets under the latter's control. (R. 73, 75.)

Petitioner's further reliance upon *Pufahl* v. *Estate of Parks, supra,* and *Department of F. I.* v. *Mercantile-Commerce B. & T. Co.,* 92 F. 2d 639 (C. A. 7th), certiorari denied, 303 U. S. 656, to support her contention that the United States was "estopped" from instituting an action in the District Court (Pet. 13-16), is misplaced. The facts of both cases are clearly different from those of the instant case. The Court of Appeals was obviously correct in holding that the opinion in the *Pufahl* case, *supra,* is not authority for the proposition that the United States could not obtain permission from a state court to withdraw its intervention before trial and subsequently bring an *in personam* action in the District Court. (R. 73.) The court is also correct in distinguishing the *Department of F. I.* case, *supra,* upon its own particular facts, and holding that the term "estoppel" as used in that case applied only to the facts therein. (R. 73.) In that case the federal court action was instituted approximately two years after a similar proceeding had been commenced in the state court. It undertook to litigate the

same issues, involved the same parties, and was designed to remove the *res* from the state court. Conversely, the Court of Appeals properly found no basis for an estoppel in the present case (R. 73), where the issues and parties in the state and federal proceedings were different, there was no prior adjudication of the Government's tax claims in the state court, and the petitioner was not prejudiced by the institution of the District Court action. *Denny* v. *Bennett,* 128 U. S. 489. Furthermore, the fact that the United States filed a routine notice of a pending claim for taxes in the Chancery Court (R. 25-29) likewise affords no basis for finding any estoppel, as contended by petitioner (Pet. 15-16). Clearly, the United States is entitled to give notice of taxes due and owing, and it is difficult to see how petitioner could be prejudiced by such action.

Finally, petitioner's assertion (Pet. 21-23), that the findings of fact made by the District Court that there was no consideration for the note, mortgage and pledge, were erroneous and not supported by any substantial evidence, is also without any merit. Evidence produced at the trial clearly supported the District Court's findings of fact (R. 47-49) that the chattel mortgage and pledge executed by taxpayers to petitioner were fraudulent as having been made for the purpose of hindering and delaying the United States in the collection of revenue. Consequently, the Court of Appeals was justified in holding (R. 76-77):

> The contention [made by petitioner] that the findings of fact on the question of whether

the notes and chattel mortgages were without consideration and made for the purpose of defrauding creditors were clearly erroneous is without merit. It will serve no good purpose to review the evidence. An examination of the record discloses adequate evidentiary support for the court's findings.

It is settled that concurrent findings of two courts below are final in the absence of exceptional showing of error. *Comstock* v. *Group of Investors,* 335 U. S. 211, 214; *Tennessee Coal Co.* v. *Muscoda Local,* 321 U. S. 590, 605. Here, petitioner has failed to show any error in the findings below.

CONCLUSION

The decision below is correct, and in accord with applicable decisions of this Court. There is no conflict of decisions, and no question calling for review by this Court is presented. The petition for certiorari should be denied.

Repectfully submitted,

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FEBRUARY, 1954.

APPENDIX

Internal Revenue Code:

SEC. 3678. CIVIL ACTION TO ENFORCE LIEN ON PROPERTY.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) *Parties to Proceedings.*—All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) *Adjudication and Decree.*—The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where

a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.*—In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(26 U. S. C. 1946 ed., Sec. 3678.)

SEC. 3800. JURISDICTION OF DISTRICT COURTS TO ISSUE ORDERS, PROCESSES, AND JUDGMENTS.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of *ne exeat republica,* orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies

of the United States in such courts or otherwise to enforce such laws.

(26 U.S.C. 1946 ed., Sec. 3800.)

28 U.S.C.:

SEC. 1345. *United States as plaintiff.*

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

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